

RECEIVED

JAN 26 2001

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Access Charge Reform

)
)
)
)
)

CC Docket No. 96-262

ADDITIONAL REPLY COMMENTS OF AT&T CORP.

Mark C. Rosenblum
Peter H. Jacoby
AT&T CORP.
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4243

Daniel Meron
Michael J. Hunseder
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

Attorneys for AT&T Corp.

No. of Copies rec'd 014
List A B C D E

Dated: January 26, 2001

ORIGINAL

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY	1
I. The Comments Plainly Demonstrate That The Commission Should Act To Limit High-Priced CLEC Access Services	3
A. ALTS' Survey and All Other Reliable Data Show That CLEC Rates for Access Services Far Exceed ILEC Rates	3
B. There Is No Justification For Permitting CLECs To Impose Their Above-Market Access Prices On Captive IXC's	7
II. The Commission Should Not Adopt Any Rural Exemption	11

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Access Charge Reform

)
)
)
)
)

CC Docket No. 96-262

ADDITIONAL REPLY COMMENTS OF AT&T CORP.

INTRODUCTION AND SUMMARY

In its comments filed in response to the Commission's request for Additional Comment on Issues Relating To CLEC Access Charge Reform,¹ AT&T demonstrated that "the exchange access marketplace (and, in particular, the market for switched access) is characterized by serious market failures," and that "as a result of these market failures, many CLECs have adopted switched access rates far in excess of ILEC charges in the same service areas." AT&T at 2. In particular, AT&T supplied the Commission with comparative data on CLEC access rates which demonstrate that many CLECs have adopted access rates in excess of 5 times the rates charged by ILECs in the same area, thereby providing further support for AT&T's proposal that the Commission mandatorily detariff CLEC interstate access rates that exceed the rates charged by the ILECs in the same service area. Finally, AT&T's Additional Comments demonstrated that a "rural exemption" from a proposed ILEC benchmark is both unsound as a matter of policy, and unworkable as a matter of practice.

¹ Common Carrier Bureau Seeks Additional Comment On Issues Relating To CLEC Access Charge Reform, CC Docket No. 96-262, DA 00-2751 (December 7, 2000) ("Additional Comment Public Notice").

The comments filed in response to the *Additional Comment Public Notice* starkly confirm that – contrary to their repeated denials of this fact – many CLECs have chosen to tariff rates for switched access that widely exceed the rates charged by the ILECs in the same service area. Remarkably, while many of ALTS’ member CLECs continue to deny, without providing any evidence, that many CLECs have tariffed rates that widely exceed corresponding ILEC rates, the survey submitted by ALTS itself derives a composite average CLEC rate for access (4.27 cents per minute) that is within 8 one-hundredths of a cent of the effective rate that AT&T derived from an analysis of the actual bills it has received from CLECs with whom it does not have a contract (4.34 cents per minute). *See infra* Part I.A. By contrast, it is undisputed that the average access rate charged by the large ILECs is well under 1 cent per minute. *Id.* There is thus no longer any basis to dispute – if there ever existed any such basis – that the level of CLEC access rates represents a significant problem requiring redress by the Commission.

None of the various justifications offered by the CLECs to support their asserted right to impose these supracompetitive rates on IXCs has any merit. Whether or not CLECs face average costs that are higher than the ILECs’ due to smaller traffic volumes, there is no economically rational basis for permitting the CLECs to impose these start-up costs on their customers, rather than recovering these costs through advances from their investors. At any rate, many of the purportedly cost-based “justifications” for the rate disparities offered by the CLECs are in fact simply admissions that they are attempting to subsidize their local entry strategies by foisting the majority of the fixed costs that account for a large part of access rates on captive IXCs (who, the CLECs insist, cannot decline this traffic and who face rate-averaging requirements that prevent them from passing on these costs to the CLECs’ end users), rather than directly recovering those costs from their local exchange customers.

The comments likewise fail to provide any principled basis for the creation of a rural exemption from any benchmark that the Commission would establish. Rural CLECs who compete in rural areas against NECA incumbents would be entitled to charge NECA's access rates even under the ILEC benchmark that AT&T has proposed, whereas CLECs who compete in rural areas against large cost-averaged ILECs in states where UNE rates have been deaveraged are eligible for the portable subsidy already established for precisely this purpose as part of the CALLS plan. AT&T at 13-14. Moreover, to the extent that competition in rural areas is being frustrated by the existence of the implicit subsidies that arise from cost-averaging by large ILECs, the solution to that problem is to create explicit subsidies available to CLECs – such as the CALLS plan provides. The solution cannot be to require IXCs and their customers to subsidize rural CLECs, no matter how inefficient, through access payments.

I. The Comments Plainly Demonstrate That The Commission Should Act To Limit High-Priced CLEC Access Services

A. ALTS' Survey and All Other Reliable Data Show That CLEC Rates for Access Services Far Exceed ILEC Rates

In October 1998, AT&T filed a petition for declaratory ruling and raised the claim that certain CLECs no longer sought to compete on price with incumbent carriers in the provision of access services, but instead filed tariffs with exorbitant rates and insisted that IXCs had no choice but to accept and pay for these services. AT&T Petition For Declaratory Ruling (filed Oct. 23, 1998). In response to AT&T's petition, the CLECs forcefully denied that high-priced access services were common in the industry, and asserted that their rates were in fact comparable to the rates charged by the incumbents. Based on these CLECs' claims, the Commission found that AT&T's petition raised disputed questions of fact, and denied the

petition. *In the Matter of Access Charge Reform*, Fifth Report and Order, 14 FCC Rcd. 14,221, ¶¶ 186-87 (1999).

Now, over two years later, in response to the Commission's further request for data regarding the rates that CLECs assess for access services, the CLECs have refused to come forward with any evidence that the rates they charge for access are similar to those of incumbent carriers. In fact, *not one* of the CLECs that filed comments in response to the Commission's further notice provided any information whatsoever even about its own rates. *See, e.g.,* Z-Tel at 2 (stating only that "[t]he rates, terms, and conditions of Z-Tel's originating and terminating interstate access services are described in its federal tariff"); CTSI-Madison at 2-3; BayRing at 2-3; Fairpoint at 2-3; Focal-RCN-Winstar at 2-3; e.spire-KMC-Talk.com-XO at 3. Based on this response to the Commission's explicit and unambiguous request for "[a]dditional, specific information" on "the level of CLEC access rates," Additional Comment Public Notice at 3-4, it is evident that the CLECs have something to hide – the high prices they charge for access services and that their previous claims have no basis in fact.

Helpfully, however, along with data submitted by AT&T and other IXC's, ALTS, the CLECs' trade association, has submitted a survey of CLEC rates that confirms that CLEC access rates, on average, are many times higher than the incumbent carriers' rates. In fact, ALTS proclaims that its survey found that the "average composite rate for all participating CLECs [was] 4.27 cents [per minute] on originating and 4.26 cents [per minute] on terminating." ALTS at 7. Thus, the only data for CLEC access charges submitted by the CLECs matches almost identically the data submitted by AT&T, which demonstrated that its billed costs for CLEC

access services average 4.35 cents per minute.² Accordingly, the undisputed evidence in the record demonstrates that CLEC access rates average at least 4.25 cents per minute.³

As AT&T and other IXC's showed, the access charges assessed by incumbent carriers are much lower. Thus, AT&T's figures showed that the average large incumbent LEC access rate was about 0.56 cents per minute, Sprint's figure was about 0.54 cents per minute, and WorldCom's figure was about 0.76.⁴ No other commenter put forth any quantitative evidence regarding the level of incumbent LEC access charges. Rather, CLEC commenters repeated their claim that contrasting CLEC and incumbent LEC access rates is improper unless the primary interexchange carrier charge ("PICC") is "considered in the comparison of CLEC and ILEC access charges." Z-Tel at 8; *see* Focal-RCN-Winstar at 9-10. But even if that claim is true, the data submitted by Sprint and WorldCom demonstrate that the incumbent carriers' rates remain many times lower than the average CLEC rate even when including the PICC charge. Thus, Sprint's per-minute access rate for incumbents, including the PICC, was 0.776 cents and WorldCom's figure was 0.979 cents. WorldCom at 3; Sprint at 7. Thus, average CLEC rates are

² The mere eight-hundredths of a cent difference in the two surveys can easily be explained by differences in methodology. For example, ALTS apparently took distance sensitive elements like transport and made certain assumptions regarding the mileage that an IXC would incur. AT&T's data, on the other hand, examined the bills it has received from CLECs, which is based on the actual mileage incurred by AT&T.

³ *See also* ASCENT at 2, 5 (there is "potential for abusive access pricing in a permissive detariffing environment" and "such abuses are indeed occurring"); ALTS at 2 ("acknowledg[ing]" that the Commission "may rightly be concerned" that CLECs have the ability to assess "unreasonable" access rates).

⁴ The figures computed by AT&T and Sprint are nearly identical. The precise methodology used by WorldCom to determine the ILEC rates is not clear, and even though WorldCom's data shows a slightly higher rate, the end result is identical: rates assessed by incumbent LECs are less than one cent per minute – even with the PICC included – and those rates are many times lower than the average rate charged by CLECs.

still about five times higher than the corresponding ILEC rates, even when the PICC is taken into account.

Moreover, the record evidence on CLEC access rates firmly contradicts the unsupported claims of various CLECs that high-priced access services are limited to the practices of “a few ‘outliers.’” Focal-RCN-Winstar at 3; *see also* McLeod at 4; CTSI-Madison at 2; BayRing at 3 (claiming complaints of high-priced access relate only to a “few CLECs” and are not a “wide scale problem”). Rather, the issue is applicable to scores of CLECs: AT&T’s data show that over one hundred CLECs charge over 2.5 cents per minute for access (AT&T at 7), and again, ALTS’ survey confirms that data, with 29 out of 36 of the CLECs it surveyed charging over 2.5 cents per minute for access. ALTS at 7. Likewise, the data submitted by WorldCom and by Sprint also demonstrates that “nearly a third of the [162] CLECs from which WorldCom purchases switched access charge rates that are more than five times higher” than the incumbent rates. WorldCom at 2-3 & App. A; Sprint at 6-8 & App. 1 & 2 (attaching *ex parte* filings showing large numbers of high-priced CLECs).⁵

Because of the large numbers of CLECs that engage in this excessive pricing, there is no merit to the suggestion made by numerous CLECs that the solution to this now-conceded problem is for IXC’s to file Section 208 rate case complaints against over a hundred CLECs. *E.g.*, CTSI-Madison at 3; BayRing at 4; McLeod at 5; USTA at 4. Given the statutory deadlines for adjudicating such complaints, 47 U.S.C. § 208(b)(1), and the large numbers of CLECs that charge above-cost rates, the Commission does not appear to have the resources adequate to respond to all such complaints that could be filed, as at least one CLEC forthrightly

⁵ As AT&T showed, another indication that high-priced CLEC access rates are widespread and distort competition in the interexchange market is that AT&T’s “run rate” – i.e., the amount of access charges billed by CLECs over the ILEC rates – for 2000 will be approximately \$125 million and could increase to \$400 or \$500 million within two years. AT&T at 10.

concedes. Z-Tel at 2 (recognizing the “Commission’s desire to avoid engaging in rate cases to set CLEC interstate access charges”). Accordingly, it is entirely appropriate for the Commission to act in this proceeding and address this rapidly-growing, industry-wide problem by establishing an ILEC benchmark and prohibiting CLECs from tariffing rates above that level.

B. There Is No Justification For Permitting CLECs To Impose Their Above-Market Access Prices On Captive IXC.

At the same time that many of the CLEC commenters continue to maintain that “most CLECs assess charges for access services [that] are comparable to corresponding ILEC access rates,” Focal-RCN-Winstar at 2, many of these very same CLECs attempt to claim that their above-ILEC rates are cost-justified. In particular, these CLECs claim that “CLECs often face higher costs in the provision of access service than other local exchange carriers,” because they “experience lower levels of utilization for switching and transport” as a result of the fact that they “must place these facilities substantially before they are able to acquire sufficient numbers of customers.” Focal-RCN-Winstar at 22; *see also* McLeod at 2-4, 6-8; TDS MetroCom at 4-5, 7-10; CTSI-Madison at 2-4, 6-9. There is, of course, good reason to treat these self-contradictory claims with skepticism. Indeed, there is perhaps no more dramatic a demonstration of the fact that the CLECs’ access rates are well above any measure of cost than the fact that ALTS has proposed reducing the rates of its CLEC members to 2.5 cents per minute from an alleged average of 4.27 cents a minute within six months, ALTS at 4-6, even though no claim could be made that the CLECs’ costs are likely to decrease so significantly in that time frame.

These CLECs also go to great lengths to show that their costs are significantly higher than incumbents, with the implication that CLECs are completely over-building an incumbent’s facilities in a geographic area. This is rarely, if ever, true. Most of the CLECs

adopt an “edge-out” strategy and move into areas of concentrated demand (e.g., business parks, hotels, universities, multiple dwelling units, etc.), providing exchange service using DS-1s, and serving the most profitable customers. *See infra* (citing comments). They also use unbundled network elements that they purchase from incumbents when it is more cost effective. Thus, their costs are actually likely to be significantly less than an incumbents’ costs, because they are not providing ubiquitous service in an exchange area using their own facilities, like an incumbent. None of these CLECs have provided any substantiation for their claims.

More fundamentally, the fact that CLECs’ access rates are significantly higher than the access rates charged by the ILECs in the same service area cannot be justified on the basis of the CLECs’ costs. In a market where customers can chose between a dominant firm, like an ILEC, and other smaller firms, the smaller firms will be constrained to charge no more than the dominant firm. Smaller firms competing in such a market that cannot cover their costs at the market rate will not be able profitably to charge higher rates, and in the long run they will be eliminated from the market. Thus, if the market for access services were competitive (which it clearly is not), a CLEC would have to meet or beat the price for access set by the ILEC (or the otherwise lowest-cost and most efficient supplier), and the fact that its costs might be higher would be wholly irrelevant. Accordingly, it would not be just and reasonable to permit a CLEC to use its bottleneck locational monopoly power over access to its customers to recover any costs from its IXC customers that it cannot recover by charging the ILEC access rate.

In this respect, CLECs providing access services should be treated no differently than new entrants in any other market. Although new entrants often have higher start-up costs (and average costs) than existing firms within a market, new entrants do not attempt to recover those costs from their customers by charging above-market rates for their product or service.

Instead, new entrants seek to attract new customers by setting their prices at or below the market rate and hope in time to attract sufficient volume to reach the break-even point and then turn a profit. Until they reach a critical mass of customers, however, new entrants in any other market obtain funding for their start up cost from banks and shareholders, not from their customers. Indeed, the CLECs' concession that they are in fact pricing their access services at a level designed to recover their higher start-up costs is simply an admission that the access market is not competitive and that the CLECs possess market power in that market.

Perhaps recognizing this fact, a number of CLECs alternatively claim that a "meaningful" comparison of ILEC and CLEC access rates is not possible because ILECs recover a large share of their access costs from their end users through the SLC, whereas CLECs allegedly "do not have this revenue-insulation capability." *Focal-RCN-Winstar* at 15; *see also* *BayRing* at 8-10, 16; *RICA* at 16; *Z-Tel* at 8-10. This claim is nonsense. As the Commission is well aware, no provision of the Act or the Commission's rules prevents CLECs from recovering costs by imposing any form of end user charges. Instead, the reality is that CLECs *choose* not to recover a fair share of their fixed costs from their end users, for whose business the CLECs must compete vigorously with the ILECs, and instead choose to recover those costs from IXCs, over whom CLECs have monopoly power. The fact that many CLECs recover their costs in this manner is simply a reflection of the fact that the CLECs employ an unlawful strategy of subsidizing their competitive local exchange services through revenues obtained from non-competitive services (switched access).

Indeed, although the CLECs have vigorously denied in the past the fact that they are cross-subsidizing their local exchange services through revenue obtained from access in violation of § 254(k) of the Act, a number of the CLEC commenters now finally admit that this

is precisely the entry strategy they have adopted. For example, Z-Tel frankly admits that as profit-maximizing “multi-product firms,” CLECs “recover their fixed costs, which are generally substantial in the telecommunications industry, with differing markups over (or under) marginal cost for each product or service in the firms portfolio,” based in large part on “price and cross-price elasticities of demand for products and services.” Z-Tel at 8. As Z-Tel goes on to admit, CLECs employ a “Ramsey-style or monopoly markup scheme where the markup of price over marginal cost is inversely related to the elasticity of demand.” Z-Tel at 9. In other words, Z-Tel’s justification for the high level of CLEC access rates is that because local exchange service (a market in which CLECs compete against ILECs) has a more elastic demand curve than switched access (a monopoly market),⁶ CLECs rationally choose to recover a larger share of their fixed costs from access than from their local exchange service. Indeed, Z-Tel appears to admit that its local exchange rates are *under* marginal cost. Z-Tel at 8. This strategy might be justifiable on a Ramsey economic basis if IXCs were not captive customers and if their costs of access were passed on to the CLECs’ end users specifically rather than externalized on IXC customers generally. However, because the CLECs do not view IXC “demand” for access as reflecting the voluntary decision of a customer to purchase, there is absolutely no Ramsey economic optimality to permitting CLECs to load their fixed costs on access. To the contrary, the CLECs’ admission that they are using access to compel captive IXCs to subsidize the CLECs’ local entry constitutes an admission that the CLECs are engaged in a violation of section 254(k) of the Act – it cannot constitute a justification for their excessive rate levels.

Indeed, because the demand for basic local exchange service is far more inelastic than the demand for minutes of interexchange service, correct Ramsey pricing would require

⁶ Because the CLECs claim that IXCs have no choice but to “purchase” their access services, the CLECs view the demand curve for access as completely inelastic.

CLECs to recover their fixed costs most heavily from their local exchange customers rather than from access.⁷ The CLECs' strategy of loading fixed costs onto access is only profit-maximizing because FCC regulation and industry practice (in particular, the caller-pays system and geographic rate averaging by IXC) ensure that the CLECs' high access prices are not borne by their end users, but are instead largely externalized on others. The CLECs' claims that their high access prices reflect Ramsey pricing is, therefore, both false and an indirect admission that the market for access is characterized by significant market failure.

II. The Commission Should Not Adopt Any Rural Exemption

The comments provide no basis for the Commission to adopt any type of rural exemption from the ILEC benchmark. As a policy matter, no commenter demonstrates the economic necessity of a rural exemption, much less one that would support establishing a benchmark that is "substantially higher than ILEC rates" (CTSI-Madison at 2) and approaching or even exceeding the rates charged by NECA carriers (*see* Fairpoint at 5 n.5; BayRing at 10; ASCENT at 3-4). At the outset, the record demonstrates that the number of truly rural CLECs is small, and that a rural exemption would therefore have little, if any, benefit (and that any benefit would be outweighed substantially by the need to administer the exemption (see below)). ALTS' own survey of CLECs concedes that "[b]y and large, CLECs will operate in urban, or sub-urban environments that are densely populated." ALTS, Att. 1 at 3. Given this business reality, most CLECs cannot even plausibly claim a sincere need for a rural exemption. In this regard, it is important to make clear that the proposed benchmark based on incumbent LEC rates would apply equally to any competing carriers operating in an exchange served by a NECA

⁷ Because fixed costs are not sensitive to the quantity of interexchange or access minutes demanded by an end user, the most economically appropriate approach is to require the CLECs to recover such costs directly from their end users in the form of a flat-rated charge.

carrier. In those circumstances, competing carriers may also charge the NECA rate for access services where their local customer is located in an exchange served by a carrier charging the NECA rates.⁸ Thus, rural, high-cost service areas are in fact accounted for under the benchmark proposal.

The commenters supporting a rural exemption nevertheless seek an expansive exception, one that would allow CLECs to assess high access rates even when they compete in areas served by large incumbent LECs with much lower access prices. According to these commenters, it is unfair to require CLECs to price competitively with the incumbent LEC in these purportedly rural areas, because the incumbent's access rates reflect an averaging of the costs of serving both urban, low-cost areas as well as more rural, high-cost areas. *E.g.*, Fairpoint at 3-4; CTSI-Madison at 11. As AT&T and other comments demonstrated, however, this claim is unsupported either by the basic economic theory underlying the Telecommunications Act or by the practical realities of CLEC entry.

First, to the extent the Commission perceives any unfairness for "rural" CLECs attempting to compete against averaged access rates assessed by incumbents – and as discussed below, there is reason to question whether it is in fact unfair – it is fundamentally at odds with the Telecommunications Act to attempt to correct any such market imperfection with a rural exemption. The averaging of incumbent LEC rates is an implicit subsidy, and, if in fact that subsidy hinders competition in incumbents' sparsely populated territory, the Commission should replace the implicit subsidy with an explicit one. A rural exemption, by contrast, is itself another

⁸ CLECs must not be permitted to adopt a practice of serving a handful of local customers in an exchange area where the incumbent charges NECA switched access rates and then apply the NECA rates to all of its access services. Nor should CLECs be allowed to aggregate traffic from outside an exchange served by a carrier charging NECA rates and then route it through a switch located in such an exchange so that they may charge the higher NECA rates.

type of implicit subsidy from IXC's and their customers to these purportedly rural CLEC's, and it makes no sense to try to correct any implicit subsidy in incumbent LEC access rates with yet another implicit subsidy. Indeed, any such action would violate Congress' direction in Section 254(e) that all subsidies be made explicit.

In fact, consistent with Congress' direction, the Commission has already fundamentally rejected this approach in its *CALLS Order*. There, it established a \$650 million explicit funding mechanism for universal service by local carriers, which replaces implicit subsidies that had been collected through interstate access charges. See *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd. 12962, 13039, ¶ 185 (2000) ("*CALLS Order*"). The *CALLS Order* provides that a CLEC can receive the designated interstate support once it begins to serve an eligible customer in a high cost area where UNE rates are deaveraged and the average interstate common line cost per line exceeds certain benchmarks. Given this approach, there is no need to create a new, additional subsidy just for these allegedly rural CLEC's. AT&T Comments at 14. Moreover, the Commission's *CALLS Order* also affirmed that, under basic economic efficiency principles, loop costs – a significant portion of access costs – should be recovered not from IXC's but from end users, who are the cost causers. *CALLS Order* ¶ 48. There is no basis for reversing that determination and requiring IXC's and their customers to pay for a rural exemption where the CLEC is the carrier.⁹

Second, and as the comments demonstrate, there is no evidence that CLEC's necessarily incur higher costs or would have difficulty competing with incumbent LEC's in these

⁹ Moreover, as Sprint argues, nothing "forces a CLEC to enter a rural market where the incumbent has statewide-averaged access charges." Sprint at 3. Under the Act, which is pro-competition, but not pro-competitor, if a competing carrier cannot "attain[] a cost structure" similar to its "principal competitor," the incumbent carrier, then "it should not enter the market. Sprint at 3.

purportedly rural areas if they charged no more than the corresponding ILEC access rate. As WorldCom and Sprint point out, for those atypical CLECs that do not operate in densely populated areas (*see* ALTS, Att. 1 at 3), such CLECs “might or might not have higher costs than a CLEC that offers service in a more urban area, depending on a number of factors.” WorldCom at 6; Sprint at 3-4. Thus, “the rural CLEC may offer service exclusively to the largest end users in its area, while the urban CLEC may focus marketing efforts on residential or small business customers.” WorldCom at 6. Indeed, Fairpoint’s comments concede that “in most high-cost or rural RBOC markets, most CLECs must initially focus on serving business customers.”¹⁰ Where such a CLEC serves largely business customers – in which case the CLEC may use its own facilities, rather than leasing de-averaged UNE loops – the “rural CLEC might actually incur lower [access] costs.” WorldCom at 6.

Moreover, if these commenters are correct that it is unfair for CLECs competing against incumbents in less densely populated areas to price access at the same rates as the incumbents’ averaged rates, then the same rationale would apply to prices charged to end users for local service. The corresponding incumbent LEC rates are also typically averaged, yet CLECs competing in these areas do not price their local service at rates above the incumbent. To the contrary, BayRing’s comments concede that CLEC local “services offered are higher quality and *less expensive* than those of the ILECs.” BayRing at 18 (emphasis added). These CLECs’ pricing strategies demonstrate that the access rates exceed the ILEC’s rate only because these CLECs have market power. Moreover, such pricing is evidence that these CLECs may be engaging in unlawful cross-subsidization. *See* TDS Metrocom at 10 (“Reducing CLEC access

¹⁰ Fairpoint at 10; *see also* Sprint at 4 (CLECs in less densely populated areas will “aim their offerings at the most profitable customers to serve: customers having a large number of lines, large calling volumes, and a healthy appetite for added features and functions”).

revenues” will “driv[e] them to charge higher end user rates”). Given that the Commission “simply does not have reliable information” on “the particular costs of CLECs that operate in rural areas,” WorldCom at 7, there is no basis to assume that a rural exemption is necessary.

Even if there were some policy reason to adopt a rural exemption, the comments plainly demonstrate that such an exemption would be administratively unworkable, would present numerous opportunities for abuse, and thus would require the constant use of scarce Commission resources to police the application of any exemption. All commenters agree that a rural benchmark, if any, must be “clearly delineated.” ASCENT at 7; *see also, e.g.* BayRing at ii; MN CLEC at 1; NTCA at 6. But the division among the commenters itself demonstrates that no exemption can be devised that would adequately capture the alleged policy benefits of such an exemption. Moreover, the comments also demonstrate that any rural exemption would invariably contain loopholes that carriers would seek to exploit. Because of these administrative difficulties, the Commission should reject a rural exemption in any form.

Virtually all of the commenters admit that any rural exemption necessarily would be both “over-inclusive or under-inclusive,” e.g., ASCENT at 8, and that “there are problems with all of th[e] definitions” for the various rural exemptions proposed by the Commission, Sprint, and RICA. *E.g.*, BayRing at ii, 21; OPASTCO at 5; TDS Metrocom at 12; MN CLEC at 7-9 CTSI-Madison at 11. The commenters, however, are sharply divided over how to best modify the proposed exemption, which itself demonstrates that the rural exemption will be inherently unfair and unworkable. Thus, while some commenters strongly support use of Metropolitan Statistical Areas (“MSAs”) in defining the rural exemption, others claim that reliance on MSAs would be arbitrary. *Compare, e.g.*, CTSI-Madison at 11-12 (MSA “will capture CLECs who are most likely to experience disproportionately high costs in providing

access service”); ASCENT at 8; BayRing at 21 *with, e.g.,* OPASTCO at 6-7 (MSAs “are both under- and over-inclusive and therefore would be a poor fit as a basis for the exemption”); RICA at 10 (same); MN CLEC at 6. Likewise, while some commenters say that CLECs could easily price access differently depending on customer location (ASCENT at 8; BayRing at 21; RICA at 13); others claim this is not feasible MN CLEC at 5, 9 (“An approach that would apply the rural benchmark to some, but not all, of a CLEC’s access lines would impose added costs”).

In addition to these definitional quandaries, any rural exemption would be administratively unworkable, and would be used by CLECs to game the system by engaging in strategic behavior to qualify for the higher rate while avoiding any of the cost justifications that might support it.¹¹ This is vividly confirmed by Fairpoint’s comments, which seek to justify the rural exemption by claiming that CLECs face high deaveraged loop prices, but oppose limiting any exemption to those CLECs that provide residential service and that actually pay those loop prices (i.e., those serving residential and single-line businesses). Thus, these CLECs want to serve business and high-volume customers in rural areas where costs are low and still obtain the ability to charge high access fees.

Likewise, AT&T’s comments showed that a rural exemption would encourage carriers to arrange to serve high-volume users, such as chat line providers, through companies eligible for the exemption and thereby charge exorbitant access rates. AT&T at 15 & n.26.¹²

¹¹ See Sprint at 6 (noting the “abuses that can occur with any attempt to create a rural exemption”). By comparison, the Telecommunications Act exempts certain rural incumbent telephone companies from the general obligations that section 251 imposes on incumbents. GTE, one of the largest incumbent LECs, nevertheless attempted to portray its operations as eligible for this rural exemption and thereby to convince states that it should be exempt from the market-opening obligations of the Act.

¹² RICA admits (at 14) that such situations do not warrant a rural exemption, but its claim that such situations are uncommon and that the Commission may rely on the section 208 complaint process is unfounded. See AT&T at 15 n.26.

Additionally, WorldCom observes that a rural exemption would provide “incentives for CLECs to make it appear as if an end user is located in area with relatively high rates. This might be accomplished through foreign exchange type offerings.” WorldCom at 4. Because there will be countless “similar unforeseen and perverse” (Sprint at 6) effects for the Commission to police if a rural exemption is adopted, it should reject that proposal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel Meron", with a stylized flourish at the end.

Daniel Meron
Michael J. Hunseder
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000

Mark C. Rosenblum
Peter H. Jacoby
AT&T CORP.
295 North Maple Avenue
Basking Ridge, NJ 07920
(908) 221-4243

Attorneys for AT&T Corp.

Dated: January 26, 2001

Certificate of Service

I, Peter Andros, hereby certify that on this 26th day of January, 2001, that I caused a true and correct copy of the foregoing Additional Reply Comments of AT&T Corp., to be served on the following by hand-delivery and first class mail to the following addresses:

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals – TW-B204F
445 12th Street, S.W.
Washington, D.C. 20554

By Hand Delivery

Dorothy Attwood, Chief
Common Carrier Bureau
Federal Communications Commission
The Portals – Suite 5-A848
445 12th Street, S.W.
Washington, D.C. 20554

By Hand Delivery

Scott Bergman
Federal Communications Commission
The Portals – Room 6-A261
445 12th Street, S.W.
Washington, D.C. 20554

By Hand Delivery

A.J. DeLaurentis
Federal Communications Commission
The Portals – Room 5-C812
445 12th Street, S.W.
Washington D.C. 20554

By Hand Delivery

Michael K. Powell, Chairman
Federal Communications Commission
The Portals – Room 8-B201H
445 12th Street, S.W.
Washington, D.C.

By Hand Delivery

Rebecca Beynon
Federal Communications Commission
The Portals – Room 8-A302
445 12th Street, S.W.
Washington D.C. 20554

By Hand Delivery

Kathryn C. Brown
Federal Communications Commission
The Portals – Room 8-B201
445 12th Street, S.W.
Washington D.C. 20554

By Hand Delivery

Kyle Dixon
Federal Communications Commission
The Portals – Room 8-A204
445 12th Street, S.W.
Washington D.C. 20554

By Hand Delivery

Jeffrey Dygert
Assistant Bureau Chief
Common Carrier Bureau
Federal Communications Commission
The Portals – Room 5-C317
445 12th Street, S.W.
Washington, D.C. 20554

By Hand Delivery

Anna Gomez
Federal Communications Commission
The Portals – Room 8-B201
445 12th Street, S.W.
Washington D.C. 20554

By Hand Delivery

Richard Lerner
Federal Communications Commission
The Portals – Room 5-A221
445 12th Street, S.W.
Washington D.C. 20554

By Hand Delivery

Susan Ness
Commissioner
Federal Communications Commission
The Portals – Room 8-B115
445 12th Street, S.W.
Washington D.C. 20554

By Hand Delivery

Glenn T. Reynolds
Federal Communications Commission
The Portals – Room 5-A847
445 12th Street, S.W.
Washington D.C. 20554

By Hand Delivery

Jordan Goldstein
Federal Communications Commission
The Portals – Room 8-B115
445 12th Street, S.W.
Washington D.C. 20554

By Hand Delivery

Jane E. Jackson
Federal Communications Commission
The Portals- Room 5-A225
445 12th Street, S.W.
Washington, D.C. 20554

By Hand Delivery

Carol Matthey
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington D.C. 20554

By Hand Delivery

Tamara Preiss
Federal Communications Commission
The Portals- Room 5-A207
445 12th Street, S.W.
Washington, D.C. 20554

By Hand Delivery

Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
The Portals – Room 8-A302
445 12th Street, S.W.
Washington D.C. 20554

By Hand Delivery

Deena Shetler
Federal Communications Commission
The Portals – Room 5-C410
445 12th Street, S.W.
Washington D.C. 20554

By Hand Delivery

Dennis D. Ahlers
Senior Attorney
Eschelon Telecom, Inc.
730 2nd Avenue South
Suite 1200
Minneapolis, MN 55402-2456
Eschelon Telecom, Inc.

Eric J. Branfman
Troy F. Tanner
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
*BayRing Communications and Lightship
Telecom, LLC*

Jonathan E. Canis
Ross A. Buntrock
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Fifth Floor
Washington, D.C. 20036
*Association for Local Telecommunications
Services*

Teresa K. Gaugler
Jonathan Askin
Association for Local Telecommunications
Service
888 17th Street, N.W.
Suite 900
Washington, D.C.
*Association for Local Telecommunications
Services*

Gloria Tristani
Commissioner
Federal Communications Commission
The Portals – Room 8-C302
445 12th Street, S.W.
Washington D.C. 20554

By Hand Delivery

Michael J. Bradley
Richard J. Johnson
Moss & Barnett
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Minnesota CLEC Consortium

Jonathan E. Canis
Michael B. Hazzard
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Fifth Floor
Washington, D.C. 20036
Z-Tel Communications, Inc.

David Cosson
John Kuykendall
Kraskin, Lessee & Cosson, LLP
2120 L Street, N.W.
Suite 520
Washington, D.C. 20037
Rural Independent Competitive Alliance

L. Marie Guillory
Daniel Mitchell
Richard J. Schadelbauer
4121 Wilson Boulevard
10th Floor
Arlington, VA 22203-1801
National Telephone Cooperative Association

Henry G. Hulquist
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
WorldCom, Inc.

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006
Association of Communications Enterprises

Leon Kestenbaum
Jay Keithley
Richard Juhnke
Sprint Corporation
401 9th Street, N.W.
Suite 400
Washington, D.C. 20004
Sprint Corporation

Andrew D. Lipman
Patrick J. Donovan
Vickie S. Byrd
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
*McLeodUSA Telecommunications, Services,
Inc.*

Brad E. Mutschelknaus
Ross A. Buntrock
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
E.Spire Communications, Inc.
KMC TeleCom, Inc.
Talk.Com Holding Corp.
XO Communications, Inc.

Margot Smiley Humphrey
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801
TDS Metrocom, Inc.

Michael M. Kent
John La Penta
FairPoint Communications Solutions Corp.
6324 Fairview Road
4th Floor
Charlotte, NC 28270
Fairpoint Communications Solutions Corp.

Andrew D. Lipman
Patrick J. Donovan
Harisha J. Bastiampillai
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
Focal Communications Corporation
RCN Telecom Services, Inc.
Winstar Communications, Inc.

Andrew D. Lipman
Patrick J. Donovan
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
CTSI, Inc. and Madison River Communications

Stuart Polikoff
Director of Government Relations
OPASTCO
21 Dupont Circle, N.W.
Suite 700
Washington, D.C. 20036
*The Organization for the Promotion and
Advancement of Small Telecommunications
Companies*

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie E. Rones
1401 H Street, N.W.
Suite 600
Washington, D.C. 20005
United States Telecom Association

ITS
1231 20th Street, N.W.
Washington, D.C. 20036



Peter M. Andros